ORDERED.

Dated: August 10, 2022

Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Faith Elyzabeth Antonio,

Debtor.
_____/

Case No. 8:20-bk-07637-CPM
Chapter 7

DGP Products Inc. d/b/a Numeric Racing,

Plaintiff,

vs.

Faith Elyzabeth Antonio,

Defendant.
_____/

Adv. No. 8:20-ap-00537-CPM

ORDER DENYING, WITHOUT PREJUDICE, MOTION FOR LEAVE TO FILE EXPEDITED MOTION FOR PROTECTIVE ORDER TO PREVENT THE DISSEMINATION OF DISCOVERY
(Docs. 952)

Before the Court for consideration is the Defendant's *Motion for Leave to File Expedited Motion for Protective Order to Prevent the Dissemination of the Discovery Pursuant to Rule 26* (Doc. 952) (the "Motion").[1] Having considered the matter, the Motion is denied, without prejudice. Defendant may renew the motion after the parties have met and conferred as is required by Fed. R. Civ. P. ("Rule(s)") 26(c), which is made applicable herein by Fed. R. Bank. P. 7026.

[1] Defendant filed the Motion in compliance with the Court's screening injunction imposed against her (Doc. 782). *See generally Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387–88 (11th Cir. 1993) (approving of a pre-filing screening injunction "to protect against abusive and vexatious litigation").

In her proposed motion, attached as Exhibit A to the Motion, Defendant seeks a protective order to prohibit the dissemination of materials produced in discovery in this case by Plaintiff's principal Daniel Geberth and his wife, Sharon Geberth (together, the "Geberths"). The dissemination claimed in the proposed motion relates to allegations pleaded by the Geberths in their respective petitions to enjoin the Defendant from stalking them. While Defendant recites the allegations, which appear to be based upon the Geberths' knowledge of Defendant's bank statements, it is unclear whether the bank statements themselves, or any document produced in discovery for that matter, was disseminated. In fact, the proposed motion asserts that the Geberths "display[] *the intent to use* discovery material" and that Mr. Geberth has "previously *threatened to expose* . . . Defendant's information."[2] Thus, as set forth in the proposed motion, the feared dissemination may not yet have occurred.[3]

But that fact that the dissemination may not have yet occurred is not dispositive here.[4] Rather, it is the failure to include in the proposed motion a certification the Defendant "conferred or attempted to confer" with the Geberths and/or Plaintiff in good faith to resolve the matter prior to seeking relief from the Court. Rule 26(c). For this reason, even if the Court were inclined to grant the Motion, it would be required to deny the proposed motion for protective order. Accordingly, the Motion shall be denied, without prejudice, again subject to renewal after the parties have met and conferred.

The Court's ruling on the Motion, however, should not suggest that the Court finds Defendant's proposed motion wholly frivolous. The Court agrees with Defendant that the Geberths would not have a First Amendment right of access to materials made available only

[2] Motion Ex. A. p.7 (emphasis added).
[3] Given the long history of litigation involving Mr. Geberth and Defendant, it is unclear, though Defendant presumes as such, that the information was obtained by the Geberths during discovery in this case.
[4] As the Court was finalizing this Order, Defendant filed a "Notice Advising Court of Dissemination" (Doc. 953); however, the document is unsworn and provides no concrete details of the alleged dissemination. Even if the document was evidence of some type of dissemination, it would not change the Court's ruling herein.

during discovery,[5] nor would they necessarily have a common-law-right of access, particularly where, as here, the documents in question do not appear to have been presented (yet anyway)[6] to the Court for a decision on the merits.[7]

The Court also agrees that the Court has the authority to issue the type of protective order sought by Defendant should she demonstrate "good cause."[8] As Defendant correctly observes, "discovery is 'a matter of legislative grace' and . . . litigants gain access to discovery materials 'only by virtue of the trial court's discovery processes.'"[9] But, "[i]t is implicit in Rule 26(c)'s 'good cause' requirement that ordinarily (in the absence of good cause) a party receiving discovery materials might make them public."[10]

In her proposed motion, Defendant expresses concerns regarding the potential dissemination of her personal bank statements and other financial records. For that, Rule 26(c)(1)(G) seems directly applicable. But "[t]he general risk of public disclosure . . . does not [*per se*] constitute good cause for a protective order under Rule 26(c). . . . Instead, the [party seeking the protective order] must specifically identify the potentially embarrassing information and clearly define the serious harm likely to result from public disclosure."[11] As argued,

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[5] *See, e.g.*, *Jordan v. United States*, No. 15CV1199 BEN (NLS), 2017 WL 2230008, at *3 (S.D. Cal. May 22, 2017) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)).

[6] Although some of Defendant's bank statements have been admitted into evidence, the dates of those statements predate the transactions described in the proposed motion.

[7] *See generally Chicago Trib. Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001) (discussing various rights of access to court records).

[8] Rule 26(c)(1).

[9] *Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775, 788 (1st Cir. 1988) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 31–32 (1984)).

[10] *Id.* at 790; *see Wauchop v. Domino's Pizza, Inc.*, 138 F.R.D. 539, 545 (N.D. Ind. 1991) (citations omitted):

> Although non-parties have no right of access to information produced by the pretrial discovery process, *McCarthy v. Barnett Bank of Polk County*, 876 F.2d 89, 91 (11th Cir. 1989), a litigant generally may make whatever use it wishes of information obtained through discovery. Accordingly, once a showing of discoverability has been made by the party seeking discovery, the party seeking a protective order bears the burden of demonstrating good cause for the entry of a protective order with a non-dissemination provision. If this burden is met, the presumption of free use vanishes, and the party seeking discovery must demonstrate why the court should not exercise its discretion to order non-dissemination or otherwise restrict discovery.

[11] *Wauchop*, 138 F.R.D. at 545–46.

Defendant's real grievance may not lie in the dissemination of the documents themselves but rather in the factual allegations that the Geberths may intend to use those documents to prove.[12]

A protective order like that sought in the proposed motion has yet to be issued in this proceeding. Sadly, Defendant may have inadvertently brought about the harm she now seeks to avoid. Defendant declined to agree to a confidentiality agreement,[13] a decision she may now regret, but one that is ultimately not irreversible. If during their meet-and-confer, the parties decide it is in their mutual best interests to keep their respective financial documents confidential, the Court would, if asked, issue an appropriate protective order.[14]

In closing, the Court addresses Defendant's contention that at a hearing on March 22, 2021, the Court ordered "Plaintiff to direct [Mr. Geberth] to destroy all discovery in his possession."[15] The Court does not recollect any such order, and Defendant has not produced a transcript or other appropriate citation to the record. After reviewing the audio recording, the Court found no such directive. And it bears note that there is no written order requiring anyone to destroy production.

For these reasons, it is **ORDERED** that the Motion (Doc. 952) is **DENIED, without prejudice**. Defendant may renew her motion after the parties have met and conferred on the issue as is required by Rule 26(c).

Service of this Order other than by CM/ECF is not required.

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[12] For example, the Court does not agree that Defendant's mere purchase of a handgun as reflected on her bank statements opens her up to "annoyance [or] embarrassment." Rather, it is the assertion that she purchased the gun with the intent to threaten the Geberths that might subject to her to embarrassment or damage to her reputation.

[13] *See* Doc. 40 & Ex. A; Doc. 71.

[14] *See In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 356 (11th Cir. 1987) (quoting *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir.1986)) ("Because parties often resist the exchange of confidential information, 'parties regularly agree, and courts often order, that discovery information will remain private.'"); *cf. Netjets Aviation, Inc. v. Peter Sleiman Dev. Grp., LLC*, No. 3:10-cv-483-j-32MCR, 2011 WL 6752540, (M.D. Fla. Dec. 22, 2011) ("While the [Court] is certainly mindful of Ms. Ward's privacy concerns, the information sought is relevant and the Court believes discoverable. However, the Court strongly suggests, to the extent they have not done so already, that the parties enter into a mutually agreeable confidentiality agreement where they can agree to limit review of Ms. Ward's financial records.").

[15] Motion Ex. A ¶ 5.